BROWNFIELDS STUDY GROUP **MEETING JANUARY 29, 2004**

I. **Attendees**

Kenn Anderson, Arthur J. Gallagher & Co.

John Antaramian, City of Kenosha

Loren Brumberg, DNR Margaret Brunette, DNR

Darsi Foss, DNR

Nancy Frank, UW-Milwaukee

Mark Giesfeldt, DNR

Art Harrington, Godfrey & Kahn

Maureen Hubeler, DNR

Bruce Keyes, Foley & Lardner Larry Kirch, City of LaCrosse Elizabeth Kluesner, DNR

Dan Kolberg, DNR

Dennis Lawton, STS Consultants

Percy Mather, DNR Kate Mawdsley, DOA

Tony Miller, Gannett Fleming

Dave Misky, City of Milwaukee

Tom Mueller, TEMCO

Henry Nehls-Lowe, Dept. Health-Fam. Serv.

Eric Nelson, BT2 Lance Potter, DNR Michael Prager, DNR Andrew Savagian, DNR

David Senfelds, Earth Tech., Inc. Jason Scott, Dept. of Commerce John Stibal, City of West Allis

Terry Strawn, Arthur J. Gall. Risk Mgt. John Storlie, Shaw Environmental Mark Thimke, Foley & Lardner

Dave Voight, TN Assoc.

Rich Weber, Natural Resource Technology

Mae Willkom, DNR Scott Wilson, Ayres Assoc.

II. Welcome, Introductions, Agenda Repair

Mark Giesfeldt introduced Elizabeth Kluesner, who is leaving the DNR; Elizabeth thanked the Study Group for all their work, said that the Study Group is one of the great success stories for the agency and a model for how the agency should work with externals and the legislative process; it's helpful to take the time the Study Group does and think through complex issues; she also listed some current challenges for the group, including funding stability for the Remediation and Redevelopment program, which has been hit hard by layoffs; she suggested working with DNR officials if they have any questions

Art Harrington and others from the Study Group thanked Elizabeth for all the work she did on behalf of the state's brownfields initiatives and said it would be a big loss for the DNR and Study Group; Study Group presented her with a plaque thanking her for her efforts

III. 2003-05 Biennial Budget Update

Giesfeldt provided an update on the budget cuts and staff reductions, from the first "phase" of last year through the second and third phases; also mentioned that there will be an effort to work with DATCP on the \$1.3 million that was originally transferred from RR to Dept. of Agriculture, Trade and Consumer Protection (DATCP), then vetoed by the governor; there needs to be a request to the Legislature's Joint Finance Committee for expenditure authority to release the \$1.3 million; will be working with DATCP on this; also still waiting on Dept. of Administration's (DOA) approval for 9 of the 10 positions in RR that were shifted to federal funding

John Antaramian: Is the issue that the positions have not been allowed, by DOA, or do we have to go back to the Legislature?

Giesfledt and Kate Mawdsley: You do not have to go back to the legislature for these nine positions; it just needs to be approved by DOA

Tom Mueller: Is this just a one-year effort or are there longer-term plans for funding brownfields programs?

Giesfeldt: We are working on plans to look at additional funding sources, with the idea we have to plan for possibly additional reductions; we've done the initial cuts through several rounds, now we're working with Al Shea on the request for the \$1.3 million; we're looking long term at the 2005-07 Biennial Budget, we have to figure out how to maintain this effort; the program's at a point where we need to do something or we might not be able to function at a program level; we've taken the largest hit in our division

Antaramian: I talked with Mark Marotta this morning; he said he would try to get back to me about this

Bruce Keyes: Have there been any other federally funded positions that have moved forward?

Mawdsley: No, there are some that have been on hold longer than the RR program positions; all are on hold, and I don't have any information on when that will happen

Antaramian: If these positions were cut more than what the governor intended to cut, and this goes beyond the governor's cut, it shouldn't be a problem

Mueller: This is not a revenue neutral program; there's actual jobs created here, assets created, etc., so that's a heck of a lot different than other parts of the DNR; add the fact that the program is taking inordinate hit, we need to make these issues clear

John Stibal: The mayor made a good point, these jobs are outside the governor's numbers, that point should be made

Thimke: Has there been any other assessment of this program being used by other constituencies, municipalities, etc., vs. other similar programs in the DNR; it seems to me like there are a lot of staff in the Waste Management Program and not as many in RR; has there been an assessment of what they do vs. what RR does? I mean, this goes back to re-org; the RR program provides services to the state and the waste program seems to work in an area where they don't provide as many services; has there been anything done internally about this?

Kleusner: If this group wanted, now is the time to forward these ideas to Al Shea and the Department, either in writing or in person

Michael Prager: Elizabeth, could you share your thoughts on the 13.10 request to the Legislature, any sense on how that might fare?

Kluesner: That's unpredictable; we'll work with the governor's office as well on this, and we'll also meet individually with all members of Joint Finance; we'll do that, and I think we'll have allies in the State Legislature, and DATCP is ok with the approach we'll be taking

Nancy Frank: Last year, we wrote a letter during the budget deficit cuts, and we were somewhat successful; should we do that again with DOA with a letter and make these arguments, this seems like a strong argument

Stibal: We can fund these positions and keep the governor's count in tact as well as trumpet the positives the program provides to the state

Giesfeldt: Some of these issues are being dealt with literally today, some in the immediate short term and some in the longer term

Per the Study Group's request, DNR staff will prepare informational materials (similar to those sent out in fall of '03) that help explain the potential upcoming cuts as well as additional background information on RR programs

IV. Brownfields Policy Legislation Update

Darsi Foss gave an update on history of the policy proposals recommended by the Study Group; currently Senator Roessler's office has been working with staff to iron out details before introducing any of the bills addressing the policy recommendations

Foss: There are 13 items, and we've seen bill drafts on almost all of them

Loren Brumberg: Is the draft language available to the group?

Foss: Once it's to the committee we'll make it available, we'll put these on the web site – they're pdf's

Stibal: Please also let us know all the bill numbers

V. Proposed Wisconsin Brownfields Insurance Program (WBIP) – Update

Michael Prager (DNR) and Kenn Anderson from Arthur J. Gallagher & Co. (the state's environmental risk advisor and insurance broker) provided some background on the insurance program and updated where they are with the process; to access hand outs and other background information on this topic, please go to the Brownfields Study Group web page at: http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm

Kenn Anderson: In 2003, per the Study Groups' request, one of the first things we did was to meet with you about the ideas of an expanded insurance program; a plan was developed and presented to the state, comments and input were incorporated into the plan, and we met with the Study Group one more time before going to the six leading environmental insurers; two declined to participate; insurers are meeting with DNR staff from the Southeast region to discuss program's cleanup process and parameters of the insurance program;

Mueller: Tom: Are these the same groups that reviewed the VPLE insurance four years ago?

Anderson: Yes, but there are a few new ones; AIG, XL, Zurich, and Quanta are interested in the program; we also provided information to the underwriters on the universe of Wisconsin sites, including closed, reopened and VPLE sites

Nancy Frank: Have we already seen the data that was provided?

Prager: No, but we could make that available to the Study Group

Anderson: If we don't get any interest in looking at files from DNR's SER, we'll look for quotes by the end of February, and hope to have it ready to go April 1; the earlier the better

Anderson: Also, EPA wants to have regional conferences on brownfields insurance in each region; already had one in Region 1 (Boston) back in November

Mueller: Is there a further approval process by NRB or any other state entity?

Prager: No, we're helping set it up, but it's pretty much a private program

Stibal: So what day could I purchase a policy?

Anderson: As soon as it's approved, we're hoping you could do that in about two weeks after the program is in place, probably in April

Stibal: What would we submit?

Anderson: We're not sure yet, but thinking it'll be three things; 1) the application from the insured; 2) financials from the insured to demonstrate that they could cover the deductible; and 3) the approved Site Investigation (SI) from DNR; probably not a RAP

Mueller: That could be a problem, because DNR is not normally approving SI's anymore

Prager: Yes, some will have to submit a fee and get an approval

Brumberg: So just to be clear, this is not just for VPLE sites

Anderson: That's correct

Harrington: I think this is a good process, but my one concern is if the underwriters drive the Department to be more conservative than they need to be, the underwriters are becoming much more conservative on the cost figures that well-qualified consultants are bringing in

Study Group discussed the issue related to Art's concern

Foss: I understand what people are thinking here, that it's a concern, but I think it's more of an implementation issue; however we're not getting anything that would make us more conservative; we need to work with staff, and if you feel we're being different, we need to get that feedback; I think the important question to ask is: is this concern enough not to go ahead and try?

Prager: We will not change the way we do cleanups, or our cleanup standards, or guidance because of this insurance program; we don't expect that staff will even know if someone is seeking insurance when they conduct a technical review; the concerns raised by Art and others generally relate to cost-cap coverage, which is not the main focus of the proposed insurance program and may not even be part of this program

Anderson: After the program would be in place, if the underwriter had concerns with the state's cleanup program, they would just increase the premiums or stop providing coverage

Prager: We will look closely at the terms in the policy contract to see if there are any provisions that would give the insurance company any ability to impact the state's cleanup program

Group agreed this issue would not hinder progress and suggested Kenn continue forward with the process; but that it's something to keep watch on

Also, Michael Prager will make the site data available to the Study Group

Also, several members in the group requested that the site closure process be placed on the agenda for the next meeting

VI. EPA One Cleanup Program MOU – Update

Percy Mather gave an overview of the One Cleanup Plan (OCP) efforts in Wisconsin; DNR and EPA are in the process of drafting an OCP MOU, which would cover RCRA, LUST, TSCA, and Superfund; the new item not covered in the 1995 MOA is TSCA, which is not delegated to state programs;

Mather: If the MOU is put in place, the DNR would oversee most cleanups, regardless of the federal authority, under the NR 700 series; the MOU will describe the exceptions, which includes sites with contaminated sediments containing PCBs; however, this MOU would cover PCBs in soil, groundwater and building materials

Mark Thimke: There are concerns over the need to date the release and concentration under TSCA; technically, it can be very difficult to determine when the release occurred and what the original concentration of the PCB was; is there a way to focus on the cleanup rather than on this historic information?

Harrington: Can we use the hazardous waste burden of proof issue to help with this? Can this be incorporated into the MOA?

DNR will follow up on this issue and see if EPA will accept a similar process for TSCA (regarding 1978) as was acceptable for hazardous waste determinations (i.e. level of proof issue)

VII. U.S. Supreme Court Aviall Case: Affects on WI Brownfields? – FYI

Mark Thimke provided a brief background via his issue paper

Mueller: For the Superfund alternative process, do they all require National Contingency Plan (NCP) compliance?

Thimke: Yes

Frank: I'm trying to get an idea of how many sites we're dealing with, because it sounds like a big mess and only someone who has deep pockets could work with it

Bruce Keyes: Part of the problem is if you can ONLY go after cost recovery, you lose the viable threat of cost recovery even at the smaller sites; the other question I'd raise is, in the context of EPA providing federal dollars and grant administration, they go through a bit of a dance to make sure there's state compliance with NCP

Thimke: Not as many reviews and the process is not as onerous

Harrington: Regardless of this process, the Study Group should once again look at a private cost recovery process

Frank: Where are we in the process?

Thimke: There have been no oral arguments, so probably will end up being argued next term

Harrington: Another issue to consider is the Outboard Marine decision, which says if you clean it up under WI law, even if you didn't KNOW about additional problems you're subject to fines and penalties

Foss: Does the group want to look at the issue of private cost recovery again?

Stibal: Yes, maybe a small group needs to look at this, and meet with reps from the business community

Study Group agreed to convene a smaller group interested in working on this issue

LUNCH

VIII. State, Federal Grants – Updates

Commerce Brownfields and BEBR grants

Jason Scott went through his hand out; didn't get many grants from the northern part of the state, but we did get a number from the southwest, which is good because in previous grant rounds we were missing representation from that area

Mueller: In the next round will there be full funding of applications coming in?

Scott: Yes, we'll have the \$7 million available

Scott: Also, we were originally given \$7 million last fiscal year, we have \$750,000 left to be encumbered by July 1, 2004; we will award this via an application process, however, we won't do a big mailing and official announcements; we'll be accepting applications in March, and the applications will slightly change, including deadlines of course, we may have one award but could be more

Scott: After that we'll have the full \$7 million for the next fiscal year starting July 1

Scott: Also, we're looking for opinions from Study Group members about whether we should go to an open application process -- what would be the benefit of that?

Scott and members discussed the benefits and negatives of this process – open vs. quarterly vs. annually, etc.

Scott: We want to hear from the Study Group; we've given on average 14-16 grants each year for past six years

Brumberg: Would this take a statutory or rule change, or is this just a policy change?

Scott: Can be just a policy change

Stibal: Open is always better, but I would also be in favor of a quarterly process, see how it works

Mueller: I think on the he idea of an open process, we should send a letter from the Study Group commenting on this process, asking how is the scoring going to work, etc.; the problem is when you don't have a true competition you can just submit an application at any time

Keyes: How does BEBR work compared to this? It's been under-subscribed, is it scoring or what creates that problem?

Scott: BEBR does use scoring, some of the same factors come up as in the brownfields grants, but they have to meet slum and blight, urgent need, community stress, etc. for a BEBR because of the block grant specs; however, the funds do get used, no matter whether they're under-subscribed, but we still do want to see the money going for BEBR regardless

Mueller: Overall, I'd like to be able to understand the process more, even with the understanding it's going to be a subjective process, but we'd like to know more about how this works

Frank: A way to help deal with it, maybe, is through tiers of scores; a really high score gets funded immediately; the next tier you'd want to wait a bit until you can get more information; and the lowest scores you can throw those out right away

Frank: For the BEBR and brownfields grants, if both grants were on a continuous cycle, could both of them be on one application?

Scott: That might not work, it'd be a large application due to both the federal and state requirements

Dennis Lawton: Do you find situations where you say no to someone applying for a commerce grant, but it would qualify for the BEBR grant? Or does that not happen?

Scott: The BEBR projects are community driven, since only communities are eligible for block grants, so no that doesn't happen that much

Savagian: When do you need to make this decision?

Scott: The decision doesn't need to be made until July, but we would like to do so much sooner

Study Group needs to get emails with comments and input on the Commerce brownfields grant process to Jason by end of next week (2/6/04), and Jason will provide updates to the Study Group as needed; Jason's email is jscott@commerce.state.wi.us

Study Group also agreed to send a letter from the members to Commerce with the go ahead; the idea would be to work with Commerce and help tweak the process, would be willing to meet and provide any input needed; John Stibal has agreed to volunteer to draft a letter

DERF

Robin Schmidt provided a brief overview of the Dry Cleaner Environmental Reimbursement Fund (DERF) as well as proposed statutory changes

Schmidt: There are some statutory changes that are significant for the program; for example, they're changing the scope for deadlines; instead of different deadlines that relate to completion of work, there will be one deadline, September 30, 2008, which is notification deadline, so cleanups can occur as time dictates for that particular site

Schmidt: Also, we want to do outreach to all the dry cleaners; they may not realize the program exists; so we're looking for ways to identify sites, former strip malls, etc.; I know there's an International Association of Shopping Center Owners

Keyes: When did the licensing program start?

Schmidt: In 1997, so we don't have any information prior to that

Mueller: What about opening the program up?

Schmidt: It's a very small fund and dry cleaners are unwilling to fund other sites; the fund gets about \$1 million a year, and there are about 105 sites in the program

Scott: We send out 75 packets a year to interested parties; we can add drycleaners

Brumberg: You may want to check marketers of perchlorethylene and see if they have any records

Tony Miller: Redevelopment authorities or chambers of commerce will have information also, especially if malls are going through

Stibal: Two things; 1) RL Polk city directories may be helpful, but I'm not sure if they're available electronically; they're available in well-head protection studies; and 2) I had a question, we're working with a dry cleaner, can he sign an agreement to get the reimbursement back that we're giving him?

Schmidt: Yes, if you sign an agent agreement with him, you can get a reimbursement

Lawton: Environmental Data Resources (EDR), they can help identify former sites

Schmidt: We've had a hearing in the Senate, should be introduced soon; also in the Assembly it should be introduced soon and will be moving forward, it's fairly non-controversial

Lawton: For historic sites that have paid into the program, they have to pay a fee? Schmidt: No, that's changed, that doesn't happen anymore

Stibal: Could we send a letter to the Legislature supporting this? I think it would be helpful to brownfields

Keyes: Two other groups to check into, the Building Owners and Managers Association, and the WI Association of Realtors

The Study Group agreed to draft a letter on this issue and work with Robin; to provide Robin with more information and volunteer to assist, please contact robin.schmidt@dnr.state.wi.us

Land Recycling Loan Program

Maureen Hubeler updated the group on what's happening; funding list for FY 2003-04 will be published this week or next week, which will give loans a year to close; they have nine projects on the funding list; there is \$9 million left in the loan program but received \$17 million in application requests; have received Intent To Applies totaling \$18 million for 2004-2005

Hubeler: We'd like to use up the \$9 million so we can make a request to get more money in the next biennium; there's a better chance for us to get more money if we use this money up; we'll need to know by October 1, when the budget numbers are needed

Hubeler: Also, depending on the life of the program, if it stays funded we'll be making some code revisions based on some of the changes you've provided

Maureen will let the Study Group know, once she knows if there's money left, so they can do outreach; If you have any questions, contact Maureen at maureen.hubeler@dnr.state. wi.us

SAG Program

Prager updated the group on the SAG; DNR hopes to complete the application reviews as soon as possible after the Feb. 13 deadline; also, the Natural Resources Board (NRB) okayed hearings for SAG rule changes; the draft rule and green sheet package is on the DNR web page at: http://www.dnr.state.wi.us/org/aw/rr/wi_regs/index.htm; DNR is also accepting written public comments starting in mid-Feb.; hearings will be in mid-March, and hopefully final okay by NRB in June, then legislative approval process and rule in affect in the fall to be ready for round six

Green Space Grants

Prager also gave an update on these grants; all questions and issues been resolved, the funding list is finalized, right now we're waiting on the administrative green light to announce the grants

Federal EPA Brownfields Grants

Mather gave an update on the federal brownfields grants, which provides funds for site assessment, cleanups and revolving loan funds; 15 communities have submitted a total of 30 grant requests, as well as the Wisconsin Brownfields Coalition, which now includes all nine regional planning commissions (RPCs) and Commerce, DOA and DNR; DNR would be the administering agency; if the WBC's revolving loan fund of \$4 million is funded, up to 40 percent of the amount could be awarded as grants, with the remaining 60 percent as loans

Brumberg: Do we know what basis the interest rate will be for the loan portion?

Foss: We get to determine that, it'll be low to none

Lawton: Once you receive it, what's the turn around time?

Mather: We believe we have the authority already, so we don't have to create an administrative rule

Foss: There'll be a cooperative agreement (CA), and you'll have to get EPA's review for each loan; I would imagine if we got the money, we could get the CA be signed by end of September

IX. VPLE Brainstorming

Prager: We've had it up and running now, had a substantial amount of people in the program, about 130 projects in the process and 35 Certificates of Completion have been issued: however, several have stalled out, cleanups done but the paperwork seems to be holding it up, some we're just not sure on, we're kind of looking for help/volunteers to work on this

People interested in helping brainstorm ideas, identify problems, solutions, etc., please contact Michael Prager at michael.prager@dnr.state.wi.us

X. Consensus-Based Contaminated Sediment Cleanup Guidelines – FYI

Margaret Brunette: the consensus-based sediment cleanup guidance was put out as a final interim guidance, it's on our web site; it was a guidance document by both the water and RR programs; it's not required by code, it's only guidance; its "like" NR 700, but not codified; it's based on benthic community numbers only, not necessarily protective of human health, it's not protective up the food chain; we'll be doing staff training soon, as well as external training, but that's all still in the early planning stages; we hope to maybe work through Federation of Environmental Technologists (FET) and WI Groundwater Association (WGWA); we're also planning with staff to work with EPA to work on risk-based process for sediments cleanups

Miller: Who's in on the consensus, who developed it?

Brunette: It's based on all the research, and we have the link as a reference: http://www.dnr.state.wi.us/org/aw/rr/technical/cbsqg_interim_final.pdf

XI. OTHER

TIF Update

Prager updated the group on TIF legislation changes; it's close to being signed into law by the governor; many changes to the TIF law will impact the use of TIFs for brownfields redevelopment; there are also two other bills which are in the works related to TIFs; one on towns creating TIDs in some cases, and one related to allowing DOR to review TIFs and charge a fee; handouts and background information is available on the Study Group web site: http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm

Keyes: We need to at some point to go back to the ER TIF topic to make some changes that will be beneficial

Prager: I don't think this bill makes any changes to ER-TIF law, but separate brownfields policy legislation discussed earlier in the meeting today includes the group's recommended changes to ER-TIFs

Johnson Controls Update?

Keyes: For a lot of these, there's just no money left, or insurance companies have been tapped out; as far as the cases, there are some coming up now that have been pending

Foss: We're going back at the DNR and look at cases in the past 10 years; have actually seen a case where the old insurance policy came into play because it did not have pollution exclusion language

All Appropriate Inquiry – FYI

Foss: All Appropriate Inquiry will be out in a draft rule form; expect to see final in later March or early April; this will affect future purchasing of property and liability for Superfund

Brownfields 2004 -- FYI

Foss: It will be in St. Louis, and papers due end of March

ADJOURN